Supreme Court, U.S.
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No. 10-1

IN THE

Supreme Court of the United States

INTERNATIONAL COMFORT PRODUCTS, LLC,
Petitioner,

v.

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, AND HOWARD MCDOUGALL, TRUSTEE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF

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REPLY IN SUPPORT OF PETITION

Respondents Central States, Southeast and Southwest Areas Pension Fund and Howard McDougall, Trustee (collectively, the "Pension Fund") agree "that the petition for a writ of certiorari should be granted by this Court." Br. in Resp. 7. Moreover, the reasons stated by the Pension Fund's Brief in Response are almost identical to the reasons stated in the Petition.

The Pension Fund agrees that the "Sixth Circuit's decision in this case conflicts with prior decisions of the Seventh, Eighth, and Ninth Circuits" (Br. in Resp. 7), and the existence of different rules in different circuits is "contrary to the goal of applying ERISA and MPPAA in a uniform manner" (*id.* at 10). The Pension Fund also agrees that the Petition presents "an important issue of law" that affects approximately 1,500 multiemployer plans, thousands of participating employers, and millions of covered beneficiaries. *Id.* at 10-12. The Pension Fund therefore agrees that "the Court should grant the petition so that both multiemployer plans and participating employers know their rights and obligations." *Id.* at 10.

The Pension Fund's Brief in Response does disagree with the Petition in two respects, but neither undermines the parties' agreement that the Petition should be granted.

1. In its Statement of the Case, the Pension Fund spends several pages attempting to support its assertion that Top was a "professional employer organization that entered into co-employment relationships with clients to provide payroll services" and related services. Br. in Resp. 2-3. The Pension

Fund does not cite to any district court findings supporting this assertion, and there are none. That is because throughout this litigation, petitioner International Comfort Products, LLC ("ICP") has denied that Top was only a "payroll processing company," and that ICP was the "actual employer" or "joint employer" of Top's drivers. Pet. App. 29a-31a. Instead, ICP (and its predecessor companies) had a long-term contractual agreement that began years before the enactment of MPPAA under which Top provided truck driver services to transport ICP's products from its manufacturing plant to its warehouse. *Id.* at 17a.

But as the district court found, the parties' disagreement about the characterization of services provided by Top is not material to the resolution of the question presented – whether a company that never had a contractual obligation to contribute to a multiemployer plan is an "employer" obligated to pay MPPAA withdrawal liability when its vendor, which had an obligation to contribute under a collective bargaining agreement, withdraws from the plan and does not pay the statutorily imposed withdrawal liability. Pet. App. 21a n.3, 29a, 31a.

The only facts material to the resolution of that question are undisputed. Top, not ICP, was a signatory to the collective bargaining agreement with the local Teamsters union, which obligated Top alone to contribute to the Fund. Pet. App. 3a, 18a, 29a. In addition, the 1992 Agreement between Top and ICP stated that Top, not ICP, would "'handle all labor relations and the negotiating of union contracts and shall enter into any and all labor contracts covering the drivers who are its drivers and are in the service of [ICP].'" *Id.* at 3a (alteration in original).

2. The Brief in Response also disagrees with the Petition's analysis of the merits of the question presented. In this regard, the Pension Fund agrees entirely with the reasoning of the Sixth Circuit below. See Br. in Resp. 8-10. The Pension Fund and Sixth Circuit are wrong, as the Petition demonstrates. See Pet. 17-21. But this is not the time or place to debate the merits; the parties can do that when they brief the issue after certiorari is granted.

* * * *

For the foregoing reasons and those stated in the Petition, the petition for writ of certiorari should be granted.

Respectfully submitted,

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